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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 02.04.2019**

% **MAC.APP. 909/2015 & CM APPL.13712/2019**

RELIANCE GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr.A.K. Soni and Mr.Pavan Kumar, Advs

versus

OM PRAKASH YADAV & ORS. ..... Respondents

Through: Mr.Sunil Kumar Verma, Advocate for the respondents no.1 and 2.

CORAM:
HON'BLE MR. JUSTICE A.K. CHAWLA

A.K. CHAWLA, J. (ORAL)

1. Though the matter is taken up on an application made by the claimants/ respondents no.1 and 2, for release of the amounts lying in fixed deposit, as jointly prayed, the matter is taken up for hearing on the appeal itself.

2. By the appeal, the appellant – insurer, in effect, extends challenge to the quantum of compensation awarded to the parents of deceased, Manoj Kumar Yadav in short 'the deceased', who died, as a result of the injuries sustained by him in the motor accident, in which, the truck bearing No.RJ-

11 GA 1036 in short 'the offending vehicle', was involved. In view of the fact that the involvement of the offending vehicle and the appellant being the insurer thereof, is not in dispute, and, the submission of Mr.Soni, learned counsel for the appellant is restricted to the quantum of compensation awarded under the impugned award, advertence to the other aspects on which the claim petition was maintained, is not called for.

3. Under the main head of loss of income / dependency, the tribunal has awarded a sum of Rs.20,65,500/-, on the basis of the purported salary certificate Ex.PW-1/3 of the deceased. The reasons and the conclusions drawn by the tribunal in the impugned judgment-award to that effect are, as follows:

> *"13. Deceased Manoj Kumar Yadav was stated to be doing private job and earning Rs.12,750/- (Rupees Twelve thousand Seven Hundred Fifty only) per month as per salary certificate Ex.PW-1/3. No evidence has been brought on record by respondent to demolish the said salary certificate & income proof of deceased. Hence this document proves that deceased Manoj Kumar was doing Private job and was drawing salary of Rs.12,750/- p.m. (Rupees Twelve thousand Seven Hundred Fifty only) at the time of his death on 12.07.2013."*

4. During the course of hearing, learned counsel for the respondent nos.1 and 2, concedes that but for the certificate Ex.PW-1/3, no other cogent evidence was led. This certificate, which is purportedly issued by M/s.Vibhuti Estates Pvt. Ltd., has come to be exhibited in the deposition of the father of the deceased, who appeared as PW-1 and tendered his evidence

by way of affidavit PW-1/A. Can the exhibition of a document by itself, be construed to be proof of the contents thereof, the answer thereto under the basic legal jurisprudence, is certainly in the negative. It is a fundamental law that the exhibition of a document only has an effect of its being looked into by the Court, but, a mere exhibition does not have the effect of proving the contents thereof. To prove the contents of a document, either the author thereof has to be examined, and, in an eventuality, it is not possible or feasible, the secondary evidence has to be led, with the permission of the Court. Nothing of the kind, however, occurred before the tribunal in the case in hand. This fundamental error is significant and invites quashing of the award founded on such fundamental error and perversity.

5. Mr.Soni, learned counsel for the appellant also assails the impugned award for the compensation awarded under the other four heads of loss of love and affection; funeral expenses; loss of estate; and, loss of consortium, which have come to be awarded against such heads in the sums of Rs.1,00,000/- ; Rs.25,000/-; Rs.1,00,000/-; and, Rs.1,00,000/- respectively. In his submissions, the compensation so awarded was in utter disregard to the reasonable figures prescribed by the Supreme Court in ***'National Insurance Company Limited vs. Pranay Sethi and Ors.'*** 2017 SCC OnLine SC 1270. In his submissions, while the ratio of the judgment in ***Pranay Sethi's*** case, does not provide for compensation under a separate head of loss of love and affection, under the head of loss of consortium, Rs.40,000/- was prescribed, and, that, under the heads of funeral expenses and loss of estate, Rs.15,000/- each, were prescribed. There is merit in the contention so raised by Mr.Soni and in view of the ratio of the judgment of Supreme

Court in ***Pranay Sethi's*** case, the compensation awarded under the other four heads also cannot be sustained.

6. In view of the foregoing, when the impugned award under all the heads is not found to be based on the fundamental principles of law, which were required to be followed by the tribunal and is seen to be perverse, there is no hesitation to set aside the compensation that has come to be awarded thereunder. In doing so, the Court, however, cannot remain completely oblivious of the fact that the respondent nos.1 and 2, in any event, are entitled to some compensation. When confronted with this situation, Mr.Soni, learned counsel for the appellant fairly conceded that on the basis of the minimum wages prescribed for a matriculate, which the deceased was, the compensation comes to Rs.14,20,000/-, and, that, the appellant- the insurer, does not dispute its liability to this effect, and, that, from the amounts lying deposited with the Registrar General of this court, in pursuance of the directions given on 27.11.2015, such may be released to the respondent nos.1 & 2, subject to adjustment(s), on the adjudication afresh of the due compensation payable to the respondents no.1 and 2 under the various heads for which, an opportunity may be given to the parties to lead their respective evidence before the tribunal.

7. In view of the foregoing, lest, miscarriage of justice results, in the event, the deceased was actually employed and earning higher emoluments than the wages prescribed for a matriculate, it is considered just and proper, to remand the matter back to the tribunal to afford another opportunity to the respondents no.1 and 2 to lead cogent evidence to prove the actual income

of the deceased at the time of the accident and an opportunity to the appellant-the insurer as well, to lead its evidence in rebuttal thereto, and, then, the Tribunal records its findings afresh, on the quantum of compensation under all the heads afresh, in accordance with law. For the time being, as conceded to by Mr.Soni, learned counsel for the appellant, from the amount(s) lying deposited with the Registrar General of this Court, a sum of Rs.14,20,000/- with interest accruing thereon, shall be remitted to MACT, Dwarka Courts, and the remaining, released to the appellant. For the amount of Rs.14,20,000/- with interest, so remitted to the account of MACT, Dwarka Courts, the tribunal shall apportion and disburse such undisputed compensation payable to the respondent nos.1 and 2, with such terms and conditions, as may be considered necessary and proper, to ensure that such compensation, does not fritter away. Registrar General shall ensure such release(s) /remittance(s) within two weeks from today. Parties shall appear before the tribunal on 07.05.2019. It is made clear that any observation made in this order, shall have no bearing on the fresh assessment of the compensation under the various heads by the tribunal.

8. Appeal and the pending applications stand disposed of, in the aforegoing terms.

Dasti under the signatures of the Court Master.

A.K. CHAWLA, J.

APRIL 02, 2019
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